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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

14 CR 243 (JSR)

5 ROBERT FAIELLA,

6 Defendant.

7 -----x
8 New York, N.Y.
9 May 6, 2014
11:00 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 PREET BHARARA,

15 United States Attorney for the
16 Southern District of New York

17 CHRISTIAN EVERDELL

Assistant United States Attorney

18 DAVID BRAUN

19 Attorney for Defendant
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1 THE DEPUTY CLERK: This is United States versus
2 Faiella, Docket No. 14 CR 243, defendant number one. Will
3 everyone please be seated and will the parties please identify
4 themselves for the record.

5 MR. EVERDELL: Good morning, your Honor. Christian
6 Everdell standing in for Serrin Turner for the government.

7 MR. BRAUN: Good morning, your Honor. David Braun on
8 behalf of Mr. Faiella.

9 THE DEFENDANT: Robert Faiella, your Honor.

10 THE COURT: Good morning.

11 We are here because of a telephone application that
12 was made by defense counsel to be relieved. One of the reasons
13 given, over the phone to my law clerk by defense counsel, was
14 that the defendant had insufficient funds to pay his counsel.
15 In a criminal case, that's not normally a reason to relieve
16 counsel. Indeed, under the rules of this court and the ethical
17 rules of the State of New York, which this court has adopted,
18 all criminal counsel are on notice that once they appear, they
19 will not normally be relieved simply because their client has
20 fallen into economic difficulties.

21 However, counsel indicated that there may be other
22 reasons, which were of the nature of differences between him
23 and his client. So I'm going to for the moment excuse the
24 prosecutor and other folks who are here and seal the courtroom
25 briefly, to hear those reasons on a sealed basis and then

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1 everyone will be invited to come back in.

2 (Pages 4-10 SEALED by order of the Court)

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1 THE COURT: Counsel is here, and I need to tell the
2 defendant, before you say anything further, that there are some
3 reporters here as well.

4 THE DEFENDANT: I'm aware of that.

5 THE COURT: So we're back now in open court.

6 THE DEFENDANT: Yes.

7 THE COURT: The Court has determined that, in terms
8 more often used in family court, there are irreconcilable
9 differences between the defendant and his counsel, but it also
10 appears that the defendant may well qualify for appointed
11 counsel.

12 So, with defendant's agreement, his present counsel,
13 the defendant, and the government should go to the Magistrate's
14 Court, have the defendant fill out the CJA form, and assuming
15 he qualifies, I understand that the CJA attorney on duty today
16 is David Rody, well-known to this Court for the excellence of
17 his representation, who will then be appointed. Once he's
18 appointed, then automatically Mr. Braun will be relieved.

19 However, Mr. Braun is under duty to continue to
20 cooperate fully with the new counsel regardless of any fee
21 disputes that may be ongoing between him and his client, and to
22 also apprise new counsel, as I'm sure the government will as
23 well, of the schedule that's been set. If there are any
24 short-term adjustments in the schedule that need to be made,
25 just jointly call chambers and we will deal with that, but as

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1 you well know, the trial date will not move under any
2 circumstances.

3 The defendant has raised a fee issue with the Court,
4 and the Court has informed the defendant that it sounds to me
5 like it's a matter of Florida contractual law, not a matter
6 properly before the Court, but he can consult with his new
7 attorney if he wishes on that and see if there's something
8 further that needs to be raised with the Court.

9 THE DEFENDANT: Your Honor?

10 THE COURT: Yes.

11 THE DEFENDANT: What if I don't want to relieve him on
12 his duties at this time?

13 THE COURT: What if you don't? I'm sorry.

14 THE DEFENDANT: What if I don't want to relieve him as
15 my counsel at this time?

16 THE COURT: What if you want to relieve him?

17 THE DEFENDANT: If I don't want to relieve him as my
18 counsel, is it his responsibility that he has to stay on the
19 case?

20 THE COURT: No. I have determined that he will be
21 relieved as soon as new counsel, because of the irreconcilable
22 differences.

23 THE DEFENDANT: OK, your Honor.

24 THE COURT: So, no, that's not a matter within your
25 discretion.

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Anything else we need to take up?

MR. EVERDELL: Your Honor, once the defendant fills out the financial affidavit, do we return to your Honor's court for the substitution of counsel or can we --

THE COURT: No, no, no. The magistrate judge will take care of that.

MR. EVERDELL: Thank you, your Honor.

THE COURT: All right, very good. Thanks very much.

THE DEFENDANT: Your Honor?

THE COURT: Yes.

THE DEFENDANT: Will have I have to stay in New York much longer?

THE COURT: This will take about an hour.

THE DEFENDANT: All right. Thank you very much.

MR. BRAUN: And, your Honor, I wanted to thank you for what you said at the arraignment the other day, about welcoming me here and you're happy to have me here. I appreciate that, and had this other unforeseen stuff not happened, I would have looked forward to trying the case here with you.

THE COURT: That's very kind of you. Perhaps I'll see you in some future case.

MR. BRAUN: Thank you.

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